



**THE ATTORNEY GENERAL  
OF TEXAS**

August 28, 1989

**JIM MATTON  
ATTORNEY GENERAL**

Honorable Chet Brooks  
Chairman  
Health and Human Services Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

LO-89-67

Dear Senator Brooks:

You advise us that you sponsored legislation in the 71st legislature to promote and regulate aquaculture in Texas. The bill, Senate Bill 1507, takes effect on September 1, 1989. Acts 1989, 71st Leg., ch. 637, at 2112.

You tell us that shortly after the legislature adjourned, a member of your senate staff assisted in the formation of a nonprofit corporation to promote aquaculture. This employee is interested in continuing his employment in the senate as well as performing work for the corporation on a salary basis.

You ask whether sections 36.08 and 36.09 of the Penal Code prevent this dual employment. Section 36.08(f) prohibits a public servant who is employed by the legislature or a legislative agency from soliciting or accepting a benefit from from any person. Section 36.09 makes it an offense for any person to offer to a public servant a benefit that the public servant is prohibited by law from accepting.

You tell us that the staff member will continue to work as a employee in your office performing his regular duties. Any work performed for the corporation will be done outside of the employee's regular hours of state employment. Assuming the correctness of the facts as presented, we can advise you on the applicability of sections 36.08 and 36.09 to the situation you describe.

Section 36.10 of the Penal Code provides in pertinent part:

Sections 36.08 (Gift to Public Servant)  
and 36.09 (Offering Gift to Public Servant)  
of this code do not apply to:

(1) a fee prescribed by law to be  
received by a public servant or any other  
benefit to which the public servant is  
lawfully entitled or for which he gives  
legitimate consideration in a capacity  
other than as a public servant.

That provision removes the outside employment you describe  
from the prohibitions of sections 36.08 and 36.09 as long as  
the compensation received from the corporation is for  
services performed in a capacity other than the employee's  
capacity as a legislative employee.

Very truly yours,



Karen C. Gladney  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

Rick Gilpin  
Chairman  
Opinion Committee

KCG/er

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